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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matters of

Review of the Pioneer's  
Preference Rules

Amendment of the Commission's Rules  
To Establish New Personal  
Communications Services

ET Docket No. 93-266

Gen. Docket No. 90-314

TO: COMMISSIONERS QUELLO, BARRETT AND NESS

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FEDERAL COMMUNICATIONS COMMISSION  
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COMMENTS ON

AMERICAN PERSONAL COMMUNICATIONS

EMERGENCY REQUEST FOR ORAL ARGUMENT

NEXTEL COMMUNICATIONS, INC.

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July 28, 1994

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**TO: COMMISSIONERS QUELLO, BARRETT AND NESS**

**COMMENTS ON AMERICAN PERSONAL COMMUNICATIONS  
EMERGENCY REQUEST FOR ORAL ARGUMENT**

**I. INTRODUCTION**

Nextel Communications, Inc. ("Nextel") hereby respectfully responds to the Emergency Request for Oral Argument (the "Emergency Request") filed by American Personal Communications ("APC") on July 21, 1994 in the above-captioned proceedings.

APC seeks oral argument in light of the request filed by the Federal Communications Commission (the "Commission") with the United States Court of Appeals for the District of Columbia Circuit (the "Court of Appeals") for remand of the above-captioned proceedings for further Commission action.<sup>1/</sup> Both proceedings are the subject of Petitions for Reconsideration pending before the Commission. In seeking remand, the Commission indicated that it may require pioneer's preference recipients to pay for their licenses in light of its "fuller understanding of the competitive

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<sup>1/</sup> Emergency Motion for Remand of Federal Communications Commission, No. 94-1148, filed July 8, 1994 ("Remand Motion").

implications of one licensee receiving its license without payment while its competitors, under an auction process, must pay significant amounts for their licenses."2/ APC asserts that the Commission has not previously raised this issue and seeks expeditious oral argument.

Nextel is an applicant for a pioneer's preference for a license to provide Personal Communications Services ("PCS") in Gen. Docket No. 90-314.3/ On March 30, 1994, Nextel filed a Petition for Reconsideration of the Commission's decision to deny its pioneer's preference application.4/ Nextel also participated in the Commission's review of its pioneer's preference rules in ET Docket 93-266 asserting that the Commission's use of competitive bidding to license PCS made awarding PCS pioneer's preferences improper and inconsistent with the public interest.5/ If, however, the Commission continued to award these preferences, Nextel asserted that the preference recipients should pay a discounted rate for their licenses. Accordingly, Nextel has standing to comment on APC's Emergency Request.

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2/ Id. at p. 3.

3/ See Request for a Pioneer's Preference, filed by Fleet Call, Inc., on May 4, 1992. (Fleet Call, Inc. changed its name to Nextel in July 1993).

4/ Petition for Reconsideration of Nextel, Gen. Docket No. 90-314, filed March 30, 1994 ("Pioneer's Preference Reconsideration Petition"). See Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 1337 (1994) ("Third Report and Order").

5/ See Comments of Nextel, filed November 15, 1993, at p. 8; Reply Comments of Nextel, filed November 22, 1993, at pp. 3, 8.

## II. DISCUSSION

APC's request for oral argument ignores the fact that there are eight pending petitions for reconsideration of the Commission's decision awarding broadband pioneer's preferences. The pleading cycle is complete and the matters raised therein are ripe for decision -- as the Commission's remand request indicates. Moreover, contrary to APC's contentions, the question of whether broadband PCS preference recipients should pay an auction-related fee for their licenses was raised by the Commission in its Notice of Proposed Rule Making in ET Docket No. 93-266 -- reviewing the pioneer's preference rules in light of the recently-enacted competitive bidding authority -- and was commented on therein.<sup>6/</sup> The question of whether broadband PCS preference recipients should pay for their licenses is not being raised for the first time in the Commission's remand motion.

The pending petitions for reconsideration in Gen. Docket No. 90-314 question the substantive basis for the specific preference awards, debate the merits of the denial of other preference applications, and raise other challenges to the preference awards. Accordingly, if the Commission grants APC's request, it must allow the petitioners an opportunity to provide their views on all of these inseparable issues. APC's proposal is another in its ongoing efforts to control the pioneer's preference proceeding and cut-off statutory rights to Commission reconsideration and judicial review.

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<sup>6/</sup> See Review of the Pioneer's Preference Rules, 8 FCC Rcd 7692, 7693-94. See also Comments and Reply Comments of Nextel in ET Docket No. 93-266.

APC asserts that it (and presumably the other preference recipients) undertook pioneer's costs and risks to develop PCS technology and services while its competitors -- "the two entrenched cellular carriers and the ESMR operator" -- originally obtained their licenses for free.<sup>7/</sup> This is patently incorrect and an example of why oral argument must include participation from those seeking reconsideration herein. Nextel, the prospective "ESMR operator" in a number of markets, did not obtain its licenses for free, but rather through acquisitions valued in excess of 100 million dollars in its first six markets alone. Nextel is committed to invest more than 300 million dollars to develop its Digital Mobile ESMR technology and implement it in these first six markets. Nextel is further committed to invest approximately one billion dollars to implement its nationwide Digital Mobile network. Moreover, unlike APC, Nextel is using its Digital Mobile technology to provide commercial service today.

Similarly, APC argues that its license should be discounted because it invented a technology permitting PCS spectrum to be shared with microwave users.<sup>8/</sup> In its Pioneer's Preference Reconsideration Petition, Nextel argued that the Commission erred in not awarding Nextel a broadband PCS preference for its development and commercial implementation of an even more innovative frequency agile technology enabling advanced digital mobile communications systems to coexist with existing specialized

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<sup>7/</sup> Emergency Request at pp. 5-6.

<sup>8/</sup> Id. at p. 12.

Mobile Radio ("SMR") systems.<sup>9/</sup> Reconsideration remains pending and APC has not shown any basis for another opportunity to advance its position at the expense of the parties that sought reconsideration.

Therefore, if the Commission grants the Emergency Request, it should provide each party that sought reconsideration of the Third Report and Order in Gen. Docket No. 90-314, and any party that sought judicial review of the Commission's First Report and Order in ET Docket No. 93-266, equal time with APC to present their views with equal opportunities for rebuttal.<sup>10/</sup>

### III. CONCLUSION

For the foregoing reasons, Nextel respectfully requests that the scope of any oral argument permitted in the above-captioned

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<sup>9/</sup> Pioneer's Preference Reconsideration Petition at pp. 4, 7-10.

<sup>10/</sup> In its Emergency Request, APC brazenly asked the Commission for an hour to present its views, 45 minutes for the Commission staff, and only 15 minutes for petitioners in the pending reconsideration proceeding. Consistent with the above discussion, all parties should have equal time to present their views on oral argument.

proceedings include all issues in these proceedings and that all parties have equal time to present their views.

Respectfully submitted,

**NEXTEL COMMUNICATIONS, INC.**

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Dated: July 28, 1994

**CERTIFICATE OF SERVICE**

I, Rochelle L. Pearson, hereby certify that a copy of the foregoing pleading has been sent by U.S. mail, first class postage prepaid and correctly addressed, to the following parties, who have filed or responded to petitions for reconsideration of the Third Report in Gen. Docket 90-314 or filed a petition for reconsideration of the First Report in ET Docket 93-266, on this 28th day of July, 1994:

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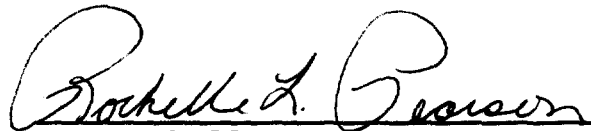
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